NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CITY OF LAKE FOREST et al.,	
Plaintiffs and Appellants,	G023884
v.	(Super. Ct. No. 772442)
COUNTY OF ORANGE,	O P I N I O N
Defendant and Appellant.	

Appeals from a judgment of the Superior Court of Orange, Warren C. Conklin, Judge. (Retired judge of the San Luis Obispo Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed with directions.

Caldwell, Leslie, Newcombe & Pettit, Christopher G. Caldwell and Mary Newcombe, for Plaintiff and Appellant City of Lake Forest.

Rutan & Tucker, Joel D. Kuperberg and Jeffrey T. Melching, for Plaintiff and Appellant City of Irvine.

Laurence M. Watson, County Counsel, Jack W. Golden, Deputy County Counsel, for Defendant and Appellant County of Orange.

* * *

This case involves two appeals from a judgment partially invalidating the certification of an environmental impact report (EIR) prepared for the expansion of the James A. Musick Branch Jail.

Plaintiffs, the Cities of Lake Forest and Irvine, petitioned for a writ of mandate under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; all further statutory references are to this code unless otherwise indicated) challenging resolutions passed by defendant County of Orange's board of supervisors certifying EIR 564 and a contemporaneous finding which exempted the jail expansion project from compliance with the county's zoning code. The trial court found EIR 564 inadequately disclosed the project's impact on four matters. It issued a peremptory writ directing defendant to vacate its certification of EIR 564 and approval of the Musick facility expansion, and ordered all further project activities suspended until defendant rectified the report's deficiencies.

Defendant appeals the invalidation of EIR 564 and the suspension order. In part, defendant contends the trial court erred by denying its pretrial motion for judgment on the pleadings which was based on plaintiffs' failure to name the Orange County Sheriff-Coroner as a party.

Plaintiffs appeal, contending the trial court erred by failing to invalidate EIR 564 on additional grounds. They also claim the trial court erred by finding defendant was not required to submit the project's zoning exemption to the Airport Land Use Commission.

For the reasons expressed in this opinion, we conclude EIR 564 satisfies all of CEQA's requirements and reverses the judgment vacating its certification. We also reject plaintiffs' zoning exemption claim. In light of our decision on the foregoing points, we need not decide the validity of the trial court's denial of the motion for judgment on the pleadings and its order suspending further activities on the project.

FACTS

The Musick property covers approximately 100 acres in an unincorporated area of Orange County bounded on the east by plaintiff City of Lake Forest, on the south and southwest by plaintiff City of Irvine, and on the west and northwest by the now deactivated El Toro Marine Air Corps Station. In the 1960's defendant established an honor farm on the property. In the early 1970's, defendant reclassified the site and since then has operated a minimum security jail on it. A large portion of the property is still used for agricultural purposes. As of 1996, the jail held between 1200 and 1300 inmates.

Over the past two decades, defendant has considered various proposals to resolve a persistent problem with overcrowded conditions in the county's correctional facilities. These proposals have reached differing conclusions concerning the use of the Musick facility.

In 1986, defendant prepared EIR 447, a proposal for expanding the Musick jail to hold over 1,500 minimum security inmates, plus build a fire training academy, communications center, and helipad on the premises. This project would have eliminated all agricultural use of the property. However, it rejected converting the facility into a medium or maximum security jail, noting "[t]he impacts . . . would be negative with regards to each of the environmental issues discussed in this EIR," and there were "no foreseen positive effects related to this alternative." The board of supervisors certified EIR 447 and approved the proposed project, but never implemented it.

In 1987, defendant considered building a long-term jail facility in Gypsum Canyon. As part of this proposal, defendant contemplated selling the Musick property and relocating the inmates to the new jail. The board of supervisors later rejected the Gypsum Canyon proposal.

In 1994, the Orange County Grand Jury recommended expanding the Musick facility to add a 3,000 bed medium/maximum security jail. The next year, the

board of supervisors approved the final EIR for expansion of the Theo Lacy Branch Jail in the City of Orange. That report "rejected [expansion of the Musick site] . . . due to the absence of a certified EIR dealing with a maximum security . . . building facility," but found it "remains as a feasible long-term option to be further evaluated."

In 1996, defendant's board of supervisors decided to expand the Musick facility. EIR 564 was prepared which proposed expanding the jail to house 7,584 minimum, medium, and maximum security inmates with room to hold an additional 384 inmates on an emergency (i.e., 60 days or less) basis. In addition, the proposal included the construction of a sheriff's station for 218 personnel and a 24-bed interim care facility for disturbed adolescents. The EIR listed defendant as the lead agency and the Orange County Sheriff-Coroner as the responsible agency. Draft EIR 564 incorporated several documents by reference, including EIR 447.

Defendant completed Final EIR 564 in October 1996. It included the comments of interested parties, defendant's responses to them, and corrections to portions of the draft report. One revision included the Orange County Fire Authority as one of the entities with which defendant would coordinate its construction activities "to ensure existing [public] facilities are protected and any necessary expansion is planned and scheduled . . . ." The Orange County Planning Commission recommended the board of supervisors approve Final EIR 564. On November 5, the board of supervisors and the sheriff followed this recommendation and certified a revised EIR 564 as complete and adequate. A majority of the board found the project consistent with the county's general plan, and exempted it from the county zoning code's land use regulations.

DISCUSSION

DEFENDANT'S APPEAL

Trial Court's Adverse Findings on EIR 564 - Introduction

The trial court found EIR 564 failed to adequately disclose the project's

impact on agricultural uses of the Musick property, air quality, public services and facilities, and its cumulative effect, but upheld the report's remaining portions. Before discussing the specific issues raised by the parties concerning EIR 564, it is important to focus on the nature of an EIR and the limited scope of our review.

An EIR is a document intended to provide both the public and public agencies with advance notice about the environmental consequences of a proposed project, list ways to mitigate its significant effects, and consider alternatives to the project. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392; *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242; *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 836.) "An EIR['s] '. . . purpose . . . is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.' [Citations.] The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.' [Citations.]" (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 392.) "Provided the EIR complies with CEQA, the [agency responsible for approving a project] may approve the project even if it would create significant and unmitigable impacts on the environment. [Citations.].)" (*Fairview Neighbors v. County of Ventura, supra,* 70 Cal.App.4th at p. 242.)

An EIR is presumed adequate and the party challenging it shoulders the burden of proving otherwise. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740; § 21167.3.) A court reviewing an EIR determines only whether, as an informational document, the report contains a sufficient level of detail and analysis so that persons who did not participate in its preparation can meaningfully understand and consider the issues presented, and allow those responsible for passing on the project to make a decision that intelligently accounts for the project's

environmental consequences. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26; *Fairview Neighbors v. County of Ventura, supra,* 70 Cal.App.4th at p. 242; *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist., supra,* 24 Cal.App.4th at p. 836.)

"CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. [Citation.] The absence of information in an EIR does not per se constitute a prejudicial abuse of discretion. [Citation.]" (*Dry Creek Citizens Coalition v. County of Tulare, supra,* 70 Cal.App.4th at p. 26.)

"In reviewing an agency's determination under CEQA, a court must determine whether the agency prejudicially abused its discretion. [Citation.] Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination is not supported by substantial evidence." (*Dry Creek Citizens Coalition v. County of Tulare, supra,* 70 Cal.App.4th at pp. 25-26. See also § 21168.5.)

Agricultural Land

The trial court concluded "EIR 564 fail[ed] to adequately disclose the Project's impact on agricultural land."

EIR 564 recognized the project would result in a loss of 33 acres of "prime farmland" on the Musick property. The statement noted "[t]he [complete] loss of . . . agricultural land on the Musick site has already been considered in . . . EIR 447 (1986)," and concluded, "[t]o the extent that there are impacts from the current proposal, . . . they are no different than those of the 1986 proposal." But it also indicated the loss of agricultural land use would be insignificant due to an "'exchange'" of 12 to 15 acres on the property, plus implementation of agricultural production on a potential conveyance of land currently within the boundaries of the deactivated military base.

The trial court concluded the project would result in a "net loss" of 21 acres of agricultural land on the Musick site. It also rejected defendant's reliance on EIR 447. It noted EIR 447 had been prepared "for a different project at the Musick site," and thus found EIR 564 "insufficient in its treatment of the loss of agricultural land." On appeal, defendant argues EIR 564 adequately disclosed the project's impact on the site's agricultural activity, and reasserts its right to rely on EIR 447's findings to support the current study's analysis. We agree with this argument.

As the trial court noted, EIR 447 analyzed the environmental impact of a jail expansion project that was substantially different from the current proposal. Thus, CEQA required defendant to prepare a new EIR for this project. (§ 21166.)

But this requirement does not mean EIR 447's findings were irrelevant and unavailable for use in analyzing the environmental impact of the current project, particularly in light of the fact both EIR 447 and EIR 564 primarily involve expansion of the Musick jail facility. CEQA provides "information or data which is relevant to [an environmental impact report] . . . need not be repeated in its entirety . . ., but may be specifically cited as the source for conclusions stated . . .[,] provided . . . that such information or data shall be briefly described, that its relationship to the environmental impact report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building." (§ 21061. See also Cal. Code Regs., tit. 14, § 15150, subd. (a).)

EIR 447 constitutes a public record (§ 21152, subd. (a)), and defendant made it available for public review during the approval process for EIR 564. In addition, EIR 564 described the prior study and its relationship to this project. In Appendix A, EIR 564 described the prior report as an analysis "for the Master Plan at the Musick Facility" which would have provided "a total of 1,500 minimum security beds at the Musick Facility, replacing the temporary tent structures and the modular complex." Referring to

the earlier study, EIR 564 described itself as "the second EIR prepared on the Musick Jail." Furthermore, EIR 564 specifically cited to EIR 447's conclusions concerning "[t]he loss of . . . agricultural land on the Musick site."

Plaintiffs recognize defendant's entitlement to incorporate EIR 447 into EIR 564 by reference. But they argue defendant cannot do so in this case because, in preparing EIR 564, it made "no effort to summarize or describe the . . . information relied upon in EIR 447 . . . to reach the insignificance finding in EIR 564," and it "fail[ed] to disclose that [EIR 447] found the agricultural impacts to be significant and unmitigable." (Emphasis deleted.) These arguments are unavailing.

Section 21061 and relevant CEQA guidelines (see Cal. Code Regs., tit. 14, § 15150, subds. (b) & (c)) do not require a more detailed discussion of EIR 447 in the current study than what is presented in this circumstance. Contrary to plaintiffs' contention, EIR 564's findings adequately dealt with the reduction in the property's agricultural use. When EIR 447 was prepared, defendant employed approximately 65 acres of the Musick property in agricultural production. EIR 447 analyzed a project calling for the complete elimination of all agricultural use of the Musick property, concluding "conversion of the site . . . will result in a very small incremental drop in the areawide agricultural production . . . ." It also recognized that proposed project's "reduction of agricultural activities and farmland within the County" constituted "an unavoidable adverse impact." In an attached statement of overriding considerations, the board of supervisors declared the benefits of the project considered by EIR 447, which included the replacement of temporary inmate housing with expanded, permanent housing to reduce "the existing shortfall" in the county's jail inmate housing capacity, "outweigh[ed]" the "adverse environmental effects of . . . displacement of . . . prime agricultural land."

In the 11 years between EIR 447 and EIR 564, the importance of the prior

report's findings, including the county's trend towards urbanization and the need for additional permanent inmate housing, have become even more compelling and provide further justification for reducing the site's use for agricultural purposes. Furthermore, EIR 564 involves a project that will only reduce, not completely eliminate, the site's agricultural activity. Not including the potential conveyance of land from the deactivated military based, the net loss of 21 acres for agricultural production on the Musick site is only about one-third of the acreage employed in this activity.

Thus, not only were the requirements for incorporating EIR 447's findings satisfied, but the trial court erred by finding EIR 564 fails to adequately disclose the current project's impact on the property's agricultural land use.

Air Quality

The trial court also found inadequate EIR 564's discussion on the project's air quality impact concerning the mitigation of increased emission of nitrogen oxides. We conclude its ruling on EIR 564's air quality discussion is too narrow and violates the appropriate judicial standard of review. In addition, the court failed to consider the entirety of the consultant's report which was attached to EIR 564 as an appendix.

Draft EIR 564 summarized the project's impact on the region's air quality, both during the construction phase (short-term impacts) and after completion of the expansion (long-term impacts). It recognized ozone, a secondary pollutant produced from "chemical reactions between other pollutants" including nitrogen dioxide, is one of the pollutants of primary concern for the Musick facility. The primary source of nitrogen oxide emissions is motor vehicles, with on-site natural gas combustion for heating, and off-site fossil fuel combustion to produce electricity, as other sources. EIR 564 found the project's daily pollutants emissions would constitute only a small portion of the county's total daily emissions. Contrary to plaintiffs' assertion, the statement does disclose the

fact that the project's nitrogen oxide emissions will exceed the South Coast Air Quality Management District's (SCAQMD) threshold of significance, but concluded that, implementation of several mitigation measures, including efforts encouraging the use of bicycles, public transportation, and ridesharing, plus the use of energy efficient materials and equipment in the construction and operation of the new facilities, would reduce "all impacts . . . to a level of insignificance."

Relying on SCAQMD's standards for determining the threshold of significance, the court concluded EIR 564 does "not explain how [its finding the proposed mitigation measures would reduce nitrogen oxide emissions to a level of insignificance] . . . is reached." It also cited a statement appearing in the final paragraph of a report prepared by a consultant for defendant which concluded that, even "[w]ith the recommended mitigation measures" the project's nitrogen oxide emissions "would still be significant."

But both the consultant's report and the final EIR's responses to public comments recognize use of SCAQMD's nitrogen oxide threshold of significance standard as a benchmark for establishing a significant environmental impact is questionable since it was derived from "criteria . . . developed . . . to be applied to point source emissions, such as an industrial smokestack." In this case, the vast bulk of the nitrogen oxide emissions created by the project will come from motor vehicles making numerous daily trips, averaging nearly 14 miles in length.

Contrary to SCAQMD's standard, Final EIR 564 found the nitrogen oxide emissions will occur over a wide area, not one locale. Thus, defendant treated this standard as merely a guidepost rather than an absolute measure of the project's actual nitrogen oxide emissions. Furthermore, the proposed long-term mitigation measures are primarily intended to eliminate this emission source by both reducing the number of vehicular trips and improving the traffic flow. The question presented for judicial review

is whether substantial evidence supports this determination, not to decide if defendant's environmental conclusions are correct. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at pp. 392-393; *National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1352-1353.) The trial court's reliance on the consultant's contrary conclusion is unavailing. The mere presence of conflicting evidence in the administrative record will not invalidate an EIR's findings. (*National Parks & Conservation Assn. v. County of Riverside, supra,* 71 Cal.App.4th at p. 1353; *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1600.)

Alternatively, citing *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, the trial court interpreted the report as concluding the project's emissions were insignificant because they contributed only a small amount to Orange County's total nitrogen oxide emissions. This finding is also erroneous. *Kings County* involved an EIR which concluded a project's contribution to the local region's ozone level was insignificant because it would emit minor amounts of the primary pollutants when compared with the total volume of these pollutants emitted throughout the entire region. (*Id.* at p. 718.) EIR 564 found the nitrogen oxide emissions produced by the jail's expansion would produce a significant adverse effect on the environment and proposed mitigation measures to reduce this effect. Consequently, *Kings County* is inapposite to this case.

Public Services and Facilities

The trial court found EIR 564 failed to adequately consider the project's impact on public services and facilities. It noted the report recognized the project will require an increase in the law enforcement personnel patrolling Lake Forest and the Orange County Fire Authority's need for additional emergency medical services, but did

not propose any mitigation measure related to these impacts.

With respect to the latter point, the trial court ignored the modification contained in Final EIR 564. The Orange County Fire Authority commented that its closest station to the Musick property was a "temporary" facility consisting of "a trailer and weather protection" for a fire engine and a paramedic van. Final EIR 564 revised the mitigation measure for the project's public facilities impacts to provide defendant would "coordinate with . . . Orange County Fire Authority regarding any construction activities to ensure existing facilities are protected and any necessary expansion or relocation is planned and scheduled . . . ." Thus, this aspect of the trial court's ruling is factually erroneous.

Plaintiff City of Lake Forest commented that the jail expansion would trigger the need for "another 24-hour shift" in the project vicinity, consisting of "one sergeant and five patrol officers" to handle an "anticipated . . . increase in traffic and safety concerns." CEQA requires findings on mitigation measures only with respect to a project's "significant effects on the environment." (§ 21081, subd. (a)(1).) This phrase refers to a substantial or potentially substantial adverse change in the *physical conditions* existing in the area affected by the project. (§§ 21060.5, 21068. See also Cal. Code Regs., tit. 14, § 15002, subd. (g); § 15382.)

Economic and social changes caused by a project generally do not constitute significant effects on the environment. (*Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1031-1032; *Marin Mun. Water Dist. v. KG Land California Corp.* (1991) 235 Cal.App.3d 1652, 1661; Cal. Code Regs., tit. 14, § 15064, subd. (e); § 15382.) "[A] project's social and economic effects may have some relevance in determining the significance of a physical change; for example, an EIR may identify anticipated economic changes which will in turn cause a physical change, or may use economic effects to determine the importance of physical changes. [Citations.]

But '[t]he focus of the analysis shall be on the physical changes.' [Citation.]" (*Marin Mun. Water Dist. v. KG Land California Corp., supra,* 235 Cal.App.3d at p. 1662, fn. omitted.)

In effect, Lake Forest is asserting the project will cause additional criminal activity in areas near the jail. Courts have recognized that a potential for an increase in criminal activity is a type of social and economic impact which does not fall within the scope of an EIR prepared under CEQA. (*Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1469-1470, fn. 2.) Thus, defendant did not abuse its discretion by failing to consider mitigation measures for this issue.

We conclude the trial court erred by finding EIR 564 inadequately discussed the jail expansion's impact on local public services and facilities.

Cumulative Impacts

The trial court held EIR 564 failed to adequately disclose the project's cumulative impacts. First, it concluded the cumulative impacts discussion covers only one page which mentioned only the site's agricultural land use and incorporated a subsequently invalidated EIR considering a proposal for reusing the property covered by the adjacent deactivated military base. The lower court also construed the report's approach as invoking an erroneous "'ratio' concept" to find no significant cumulative impact. Finally, the court relied on its invalidation of EIR 564's agricultural, air quality, and public services analyses to invalidate this section.

As discussed above, we conclude EIR 564 adequately considered the project's impacts on the loss of agricultural land, plus its effects on the region's air quality and public services. EIR 564 does discuss the effect of its impacts in relation to the proposed military base reuse plan, but contrary to the trial court's conclusion, the report does not conclude that this project is so small in relation to all other current or

foreseeable projects as to have an insignificant cumulative impact.

EIR 564 does incorporate the military base reuse plan EIR, which was later invalidated in another lawsuit, particularly concerning the impacts on traffic, noise, air quality, and agricultural land use. But EIR 564 did not solely rely on that document to find an insignificant cumulative impact. The section discussing the project's cumulative effects notes CEQA's guidelines permit an EIR to analyze cumulative impacts in either "a separate section" or "in the 'Impacts' section of the EIR." It then provides: "All traffic, air quality, noise, and other data in this EIR has [*sic*] been compiled based on the existing County of Orange General Plan and zoning designations as well as appropriate County of Orange regulatory documents. In cases where it was possible to refine data even further, this was done in the 'Impacts' section of the EIR. Therefore, in reading this EIR as a whole the reader will gain a clear understanding not only of the effects of this proposal, but of the cumulative changes as well."

An EIR must consider the impacts of the project under consideration in conjunction with other past, present, and reasonably foreseeable future projects. (§ 21083, subd. (b); *Fairview Neighbors v. County of Ventura, supra,* 70 Cal.App.4th at p. 245.) But the scope of the analysis is governed by a standard of practicality and reasonableness, not perfection. (*Ibid.*; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, supra,* 18 Cal.App.4th at p. 748.) A good faith and reasonable disclosure of information relevant to a project's cumulative impacts which allows for informed public participation and agency decisionmaking will suffice. (*Fairview Neighbors v. County of Ventura, supra,* 70 Cal.App.4th at p. 245; *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist., supra,* 24 Cal.App.4th at p. 838.)

The trial court's statement of decision focuses on the short length of the EIR 564's cumulative impacts section and fails to recognize its incorporation of the cumulative impacts analysis in other parts of the report's environmental impact analysis.

In addition, while this section of the EIR expressly mentions the cumulative impact of EIR 564 and the former military base reuse plan's EIR with respect to traffic circulation and noise, we note the trial court rejected plaintiffs' claims EIR 564 failed to adequately discuss the jail expansion project's impact on these matters. Thus, we conclude the trial court erred by invalidating EIR 564's cumulative impacts analysis.

PLAINTIFFS' APPEAL

The Project's Description

Plaintiffs contend the trial court erred by not finding EIR 564 failed to accurately describe the project. They argue defendant actually intends to build a much larger jail facility which would house over 9,300 inmates.

This argument is without merit. An accurate description of the project is necessary to ensure both the agency required to approve or disapprove of it and the public can adequately balance its benefits and costs, plus consider mitigation measures and alternative proposals. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.) EIR 564 satisfies this requirement. It describes the jail expansion as including "an absolute maximum of 7,584 regular beds" with room for "an additional 384 inmates" during "short-term emergency conditions" which are defined as "60 days or less."

Plaintiffs' 9,300 plus inmate figure is based on an exhibit attached to Lake Forest's comments on the draft version of EIR 564. That document disclosed the new jail facility would have a rated capacity of 7,584, but calculated that under a "worst case" scenario the jail could hold over 9,300 inmates. But defendant does not intend to house 9,300 inmates in the proposed facility. It is sheer speculation that overcrowding in the county's jail system will require housing over the rated capacity on a routine basis. In fact, the whole reason for this jail expansion project is to eliminate overcrowding in the current jail system. As the trial court noted, if defendant certified "an EIR for one

Project," but then attempted "to build a significantly larger one, . . . [it would be] out of compliance with CEQA and subject to restraint."

Analysis of Project's Alternatives

The trial court rejected plaintiffs' claim EIR 564 failed to adequately discuss alternatives to the Musick expansion project, finding the report provided sufficient detail to inform both defendant and the public about the county's search for additional jail facilities.

To avoid or lessen adverse impacts on the environment, an EIR must contain a meaningful discussion of all reasonable project alternatives. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565; *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at pp. 400-403.) But the scope of the alternatives which must be considered depends upon the facts of the case and is judged against a rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at p. 565; *Goleta Union School Dist. v. Regents of University of California, supra,* 37 Cal.App.4th at p. 1033.) "[A]n EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project, or to the location of the project, which: (1) offer substantial environmental advantages over the project proposal [citation]; and (2) may be 'feasibly accomplished in a successful manner' considering the economic, environmental, social and technological factors involved. [Citations.]" (*Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at p. 566, emphasis omitted.)

EIR 564's discussion of alternative proposals covers over 35 pages. The report considers 13 proposals in detail and an additional 11 alternatives in a summary fashion. As the trial court noted, the history of the county's efforts to find and establish jails for the projected growth in the need of such facilities is well-documented. Contrary

to plaintiffs' suggestion, defendant did not have to prepare a "'mini-E.I.R.'" for each of the alternative proposals it considered. Under the circumstances, the trial court properly rejected plaintiffs' attack on EIR 564's discussion of alternative proposals to the Musick jail expansion.

Hazardous Waste Impacts

The trial court rejected plaintiffs' claim defendant had failed to consider the potential hazardous waste impacts. It indicated that while defendant "acknowledged 'concerns' about possible hazardous materials" on the property, "[w]hatever is there is not an impact of the Musick Jail Expansion Project," and if during construction "such materials are found, they are required to be removed . . . ." Plaintiffs reassert their claim on appeal.

EIR 564 noted compliance with section 21092.6, which resulted in a determination that the Musick property was neither a hazardous waste site itself, nor within one mile of any such site as identified by Government Code section 65962.5. It summarized the results of a preliminary site assessment of the Musick property, an investigation by the county's environmental management agency of two irrigation pools, and the discovery of ground-water contamination on part of the property resulting from an old landfill site located on the adjacent deactivated military base. The report noted contamination from the landfill was scheduled for remediation in 1997. In addition, the county's environmental management agency found "no hazardous materials contamination issues . . . identified" with the irrigation pools.

The report's site assessment found "no medium or major environmental concerns." However, it did determine there were "two minor environmental concerns," consisting of the aforementioned landfill contamination which was already scheduled for remediation, and a potential that electric transformers on the property might contain

polychlorinated biphenyls (PCB's). It recommended "further sampling . . . be performed prior to movement of the[] transformers to determine if there are any further issues."

Finally, the assessment identified some "potential environmental conditions." These included "the potential for the soil to harbor significant amounts of agricultural chemicals," "the possibility of the presence of asbestos in some of the older buildings," and the possibility of contamination due to leaks from an underground storage tank, several 55-gallon drums, an oil pump, and the storage of solvents on the property. EIR 564 states each of these conditions will be monitored during construction, the remediation for agricultural contamination is "simple to perform," the asbestos concerns can be resolved by adopting "standard abatement techniques . . . for demolition," and notes "confirmation" of leakage from storage tanks "is the normal course of action" before construction is begun.

The trial court's ruling was correct. "The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment. CEQA is implicated only by adverse changes in the environment. [Citation.] 'The evaluation process contemplated by CEQA relates to the effect of proposed changes in the physical world which a public agency is about to either make, authorize or fund . . . .' [Citation.] Adverse environmental changes are not contemplated here. The purported contaminations are preexisting (or do not exist at all)." (*Baird v. County of Contra Costa, supra,* 32 Cal.App.4th at p. 1468.)

The trial court noted that if any preexisting contamination is found, it will have to be removed. Plaintiffs' claim that defendant has not considered the cost of remediating the property is contradicted by the contents of EIR 564 itself.

Failure to Submit Zoning Change to Airport Land Use Commission

Finally, plaintiffs contend the trial court erred by rejecting their claim

defendant violated the State Aeronautics Act (Pub. Util. Code, § 21001 et seq.) by adopting a zoning exemption for the Musick facility without first submitting this change to the Airport Land Use Commission.

The State Aeronautics Act creates an airport land use commission (ALUC) in counties with public airports. (Pub. Util. Code, § 21670, subd. (b).) The ALUC's purpose is to assist in the orderly development of public airports so as to minimize the public's exposure to excessive noise and airport-related safety hazards. (Pub. Util. Code, § 21670, subd. (a).) Among the ALUC's duties are the preparation of an airport land use plan for each public airport and the land surrounding it within its jurisdiction, and a review of "the plans, regulations, and other actions of local agencies" to determine whether their planning decisions are consistent with the commission's land use plan. (Pub. Util. Code, §§ 21674, subds. (c) & (d), 21675, 21676.)

Concerning the latter duty, Public Utilities Code section 21676 requires "[e]ach local agency whose general plan includes areas covered by [the] commission['s] plan," to submit a copy of its general plan and specific plans to the ALUC. (Pub. Util. Code, § 21676, subd. (a).) In addition, the statute declares: "Prior to *the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation* within the planning boundary established by the airport land use commission . . ., the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670." (Pub. Util. Code, § 21676, subd. (b), emphasis added.)

Noncompliance with the requirements of section 21676 is covered by Public Utilities Code section 21676.5. It provides, "[i]f the commission finds that a local

agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article . . ., the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made." (Pub. Util. Code, § 21676.5, subd. (a.).) Once "the local agency has revised its general plan or specific plan or has overruled the commission . . ., the proposed action of the local agency shall not be subject to further commission review, unless the commission and the local agency agree that individual projects shall be reviewed . . . ." (Pub. Util. Code, § 21676.5, subd. (b).)

The local ALUC has previously determined defendant's general plan, zoning code, and related ordinances are compatible with its own Airport Environs Land Use Plan (AELUP). Although the Musick property is currently zoned as A1 (General Agricultural), the use of the site as a jail is consistent with the land use element of defendant's general plan. The zoning code also allows the board of supervisors to exempt county-owned property from compliance with the code. (County of Orange Zoning Code, § 7-9-20(i)(3).) When approving EIR 564, defendant's board of supervisors also enacted a resolution exempting the Musick property from compliance with the zoning code. The question presented here is whether defendant violated the State Aeronautics Act by failing to submit the exemption resolution to the local ALUC before approving it.

Plaintiffs argue the board of supervisor's resolution falls within the requirements of Public Utilities Code section 21676, subdivision (b). This argument lacks merit. Resolutions exempting county property from the zoning code do not expressly fall within the terms of the statute. It applies to plan amendments and the adoption or approval of zoning ordinances or building regulations. The exemption procedure employed in this case is in the zoning code which the local ALUC had

previously approved. Furthermore, defendant has operated a jail on the Musick property since the early 1970's. The jail has always operated as a nonconforming use. While the current project will include additional facilities, the primary aspect is expanding the size of the jail. It does not change the use of the property. Furthermore, as noted, the operation of a jail is consistent with the county general plan's land use element.

Thus, the trial court's finding concerning compliance with the State Aeronautics Act was correct.

DISPOSITION

The judgment is reversed with directions to vacate the invalidation of EIR 564 and order suspending further proceedings on the project, and enter a judgment denying plaintiffs' petition. Each party shall bear its own costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

CROSBY, J.